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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/188,108	11/09/1998	TAKASHISA YAMAMOTO	35.G2285	3915

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FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

HOM, SHICK C

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/188,108

Applicant(s)

YAMAMOTO ET AL.

Examiner

Shick C Hom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/7/02 have been fully considered but they are not persuasive.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

3. Claims 41-50 and 52 are objected to because of the following informalities: in claims 42-45 line 1 delete "A communication network" and insert ---The communication network--- because they're reciting the communication network of claim 41. Likewise, in claims 47-50 line 1 delete "A node device" and insert ---The node device---. In claim 41 line 12 and claim 46 line 11 delete "the node device" and insert ---the first node device---, for clarity. In claim 46 line 7 delete "said input channel" and insert ---said input channels---. In claim 52

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line 3 delete typo "form" and insert ---from---. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. Claims 41-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 41 line 2 which recite "at least one node device" is not clear as to whether it is reciting ---at least one of said node devices--- of claim 41 line 1. In claim 41, lines 6, 7, 10, and 12, claim 42 lines 2 and 3, and claim 43 line 2 which recite "a signal" is not clear as to whether it is reciting ---said signal--- of claim 41 line 4. In claim 41 line 7 which recite "an output channel" is not clear as to whether it is reciting ---one of said output channels--- of claim 41 line 5. In claim 41 line 9 which recite "a first output channel" is not clear as to whether it is reciting ---a first of said output channels--- of claim 41 line 5. In claim 41 line 10 which recite "a first input channel" is not clear as to whether it is reciting ---a first of said input channels--- of claim 41 line 4. In claim 41 line 11

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which recite "a timing" is not clear as to whether it is reciting ---said timing--- of claim 41 line 9. In claim 41 line 11 which recite "a first output channel" is not clear as to whether it is reciting ---said first of said output channels--- as in claim 41 lines 9 and 5. In claim 41 line 11 which recite "a channel" is not clear as to whether it is reciting ---one of the output channels--- of claim 41 line 5. In claim 41 line 12 which recite "a first input channel" is not clear as to whether it is reciting ---said first input channel--- of claim 41 line 10. In claim 41 line 13 which recite "said input channel" lacks clear antecedent basis because no input channel have been previously recited in the claim and therefore the limitation is not clearly understood, further it is not clear as to whether it is reciting ---said first input channel--- of claim 41 line 10. In claim 42 lines 3-4 which recite "said output channel" is not clear as to whether it is reciting ---said first of said output channels--- of claim 41 lines 5 and 9. In claim 43 line 3 which recite "a plurality of output channels" is not clear as to whether it is reciting ---said plurality of output channels--- of claim 41 line 5. In claim 44 line 2 which recite "said input channel" lacks clear antecedent basis and is not clear as to whether it is reciting ---said input channels--- of claim 41 line 3. In claim 46 line 3 which recite "a first node device" is not clear

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as to how and whether the first node device is related to the node device of claim 46 line 1. In claim 46 lines 5, 6, 9 and claims 47 and 48 line 2 which recite "a signal" is not clear as to whether it is reciting ---said signal--- of claim 46 line 3. In claim 46 line 6 which recite "an output channel" is not clear as to whether it is reciting ---one of said output channels--- of claim 46 line 4. In claim 46 line 8 which recite "a first output channel" is not clear as to whether it is reciting ---a first of said output channels--- of claim 46 line 4. In claim 46 line 9 which recite "a first input channel" is not clear as to whether it is reciting ---a first of said input channels--- of claim 46 line 2. In claim 46 line 10 which recite "a timing" is not clear as to whether it is reciting ---said timing--- of claim 46 line 8. In claim 46 line 10 which recite "a first output channel" is not clear as to whether it is reciting ---said first of said output channels--- as in claim 46 lines 8 and 4. In claim 46 line 10 which recite "a channel" is not clear as to whether it is reciting ---one of the output channels--- of claim 46 line 4. In claim 46 line 11 which recite "a first input channel" is not clear as to whether it is reciting ---said first input channel--- of claim 46 line 9. In claim 41 line 12 and claims 49-50 line 2 which recite "said input channel" lacks clear antecedent basis because no input channel have been previously

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recited in the claim and therefore the limitation is not clearly understood, further it is not clear as to whether it is reciting ---said first input channel--- of claim 46 line 9. In claim 47 line 3 which recite "said output channel" is not clear as to whether it is reciting ---said output channels---. In claim 48 line 3 which recite "a plurality of output channels" is not clear as to whether it is reciting ---said plurality of output channels---. In claim 51 line 3 which recite "an output channel" is not clear as to how it relates to said plurality of output channels. In claim 51 line 8 which recite "a first output channel" is not clear as to whether it is reciting ---a first of said output channels---. In claim 51 line 9 which recite "a signal input" is not clear as to whether it is reciting ---said signal input--- of claim 51 line 4. In claim 51 line 9 which recite "a first input channel" is not clear as to whether it is reciting ---a first of said input channels---. In claim 52 line 8 which recite "a signal" is not clear as to whether it is reciting ---said signal--- of claim 52 line 3. In claim 52 lines 2-3 which recite "an output channel" is not clear as to how it is related to said output channels of claim 52 line 2. In claim 52 line 7 which recite "a first output channel" is not clear as to whether it is reciting ---a first of said output channels---. In claim 52 line 9 which recite "a first input

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channel" is not clear as to whether it is reciting ---a first of said input channels---.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 41-43, 46-48, 51, and 52 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of U.S. Patent No. 5,859,718. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application's claims 51 and 52 merely broaden the scope of the U.S. Patent No. 5,859,718 claim 1 by eliminating the buffer means and buffer control means for controlling said buffer



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means which read signals to be output in synchronization with said alteration by said variable channel control means. Note in U.S. Patent No. 5,859,718 claim 1 which recite switching signals between input terminals and output terminals including the buffer means for storing signal sent by the input terminal, the variable channel transmission means for outputting the signal received from said buffer means using the output terminals having variable channel control means for synchronously altering, in accordance with predetermined patterns so that two or more of said variable channel transmission means do not simultaneously output signals with the same channel clearly anticipate the communication control method using input and output channels which change the output channel according to a predetermined pattern as in claims 41-43, 46-48, 51, and 52, the memory means for storing the input signal from the input channels as in claims 42, 47, and establishing the pattern so that input signals are not simultaneously output to output channels as in claims 44, 45. Further, claim 1 which recite means for altering, in accordance with predetermined patterns, channels corresponding to input terminals output signals clearly anticipate the changing means for changing an output channel for outputting a signal in accordance with a predetermined pattern as in claims 41 and 46. Claim 7 which recite weighting the predetermined pattern by

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employing a time at which one of the variable channel transmission means outputs signals with the respective channels during one pattern cycle clearly anticipate the step of performing a control process to deviate the timing when the first output channel is selected for outputting a signal input from the input channel based on the predetermined information as in claims 41-43, 46-48, 51, and 52. Claim 30 which recite the switching device being provided inside a node device, claim 31 which recite a plurality of node devices being provided, and claim 32 which recite a network wherein switching device is provided for all of the node devices clearly anticipate the communication network comprising a plurality of node devices whereby each of the node devices include the step of performing communication process for communicating predetermined information with another node device as in claims 41-43, 46-48, 51, and 52. It has been held that the omission of a element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

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**Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. **Any response to this final action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

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(703) 872-9314, (for formal communications; please  
mark "EXPEDITED PROCEDURE")

**Or:**

(for informal or draft communications, please  
label "PROPOSED" or "DRAFT")

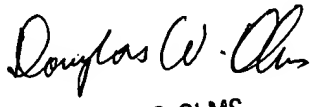
Hand-delivered responses should be brought to Crystal  
Park II, 2121 Crystal Drive, Arlington. VA., Sixth  
Floor (Receptionist).

Any inquiry concerning this communication or earlier  
communications from the examiner should be directed to Shick Hom  
whose telephone number is (703) 305-4742.

Any inquiry of a general nature or relating to the status of  
this application should be directed to the Group receptionist  
whose telephone number is (703) 305-4750.

SH

April 17, 2002

  
DOUGLAS OLMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600